

Chapter-4

Compliance

Government organizations are required to comply with applicable laws and regulations which include the Constitution, Finance Act, International treaties, laws and regulations on administration, accounting laws, environmental protection and civil rights laws, tax laws etc. Non compliance with applicable laws and regulations makes these vulnerable to fraud, misappropriation, fictitious payment, defalcation of Government Funds. Audit scrutiny revealed that the Government operations were not always in compliance with the extant laws, rules and regulations etc. as brought out in the succeeding six case studies and two other instances.

Education Department

4.1 Diversion of university fund due to non-deposit of income-tax by the university authority

According to Section 192 of the Income Tax Act, 1961, any person responsible for paying any income chargeable under the head 'salaries' shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income tax computed on the basis of the rates in force in that financial year in which the payment is made. The duty of making proper deduction from pay bill on account of statutory deductions like Income Tax devolves on the drawer of the bill without any discretion.

Deposit of income-tax of ₹31.85 lakh by the university on behalf of the employees without recovering the same from their salaries resulted in undue financial benefit to these employees for over four years.

Test-check (April-May 2009) of the records of Registrar, Dibrugarh University revealed that in course of physical verification of tax deduction at source conducted (September 2005) by I.T.O. TDS, Dibrugarh, and the result of Chartered Accountant's examination furnished to audit, Income Tax amounting to ₹31.85 lakh (₹24.41 lakh for 2003-04 and ₹7.44 lakh for 2004-05) was deducted short, from the salaries of different employees of the University. Further, as per resolution (July 2005) of the Executive Council, an amount of ₹31.85 lakh, deducted short, was deposited (July 2005 and September 2005) to the Income Tax head from general fund of the university with the condition to recoup the amount from the salaries of the respective employees in maximum twelve installments. However, it was noticed that, in violation of even the resolution of the Executive Council, the university had recovered only ₹19.85 lakh from the concerned employees and an amount of ₹12 lakh remained unrecovered (December 2009).



Administrative Building of Dibrugarh University

Thus, in violation of the Income Tax Act, deposit of income tax by the university authority on behalf of the employees, and failure to recover the same from the salaries of the respective employees, the university authority not only extended undue financial aid to the employees but also diverted the university fund to the tune of ₹31.85 lakh.

The reply of the University forwarded by the Government stated (June 2010) that entire recovery would be completed by June 2010. Recovery status is, however, awaited (August 2010). The fact, however, remains that the Provision of Section 192 of the Income Tax Act had been violated in addition to diversion of University fund.

Short deduction of Income tax and subsequent non-recovery from the pay bills of the employees is indicative of weak controls over statutory deductions from pay bills being exercised by the Head of the Office/DDO and therefore, there is an urgent need to strengthen the same to avoid recurrence.

Irrigation Department

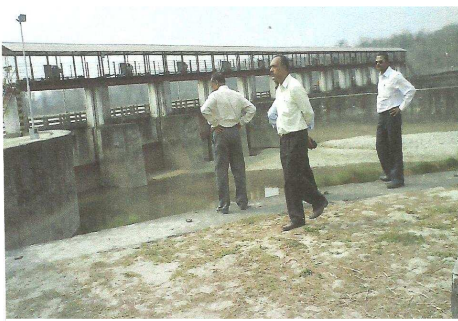
4.2 Payment of contractors' bills in excess of legitimate dues

Payment of contractors' bills in excess of legitimate dues led to misappropriation of ₹27.62 lakh.

The Executive Engineer (EE), Itakhola Irrigation Division, Bordikorai had issued (March 2005 and February 2007) cheques aggregating ₹63.71 lakh to 11 contractors against 11 bills valued ₹39.29 lakh and passed bills for only ₹36.09 lakh (*Appendix-IV*). The contractors subsequently encashed the cheques.

Thus, drawal of money in excess of passed bill value for payment was in violation of Rule 78 of AFR. This led to misappropriation of Government money amounting to ₹27.62 lakh (₹63.71 lakh - ₹36.09 lakh). Had the required Rule 78 of AFR been followed, the misappropriation could have been avoided.

This clearly shows weakening of internal controls like, nature of claim, amount claimed, correctness of claim, period of claim, expenditure sanction etc. over the proof of payment i.e. voucher prescribed for the Drawing Officer under the Financial rules and therefore, there is an urgent need to strengthen these controls.



Bordikorai Irrigation Scheme

The Government accepted (November 2009) the audit contention and stated that steps would be taken to recover the excess payment from the bills of the contractor. Recovery status of the excess payment made is, however, awaited (August 2010).

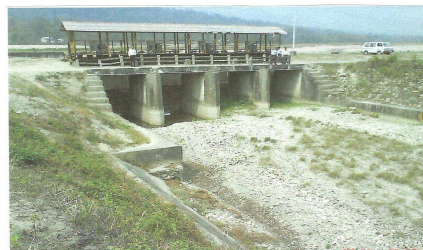
4.3 Non-adherence to codal provisions

Non-adherence to codal provisions resulted in fictitious payment of ₹2.27 crore.

Rule 131 of Assam Public Works Department Manual provides that every payment must be supported by a voucher setting forth full and clear particulars of the claim. This is reiterated in Rule 78 of AFR. Test-check

however, revealed that 92 vouchers relating to execution of different components of the Bordikorai Irrigation Scheme involving payment of ₹2.27 crore to the contractors for the months of March 2005 and February 2007 were not on record.

Though the payments were reflected in the cash book and monthly accounts but the vouchers were neither attached to the monthly accounts nor produced to Audit (*Appendix-V*). In the absence of vouchers in support of payment, though reflected in cash book, fictitious payment to the tune of ₹2.27 crore could not be ruled out. Failure to exercise the required checks as provided for in the Manual indicates a serious lapse and thus, is fraught with the risk of misappropriation of Government money.



Bordikorai Irrigation Scheme

The matter was reported to the Government in October 2009 and the Government accepted (November 2009) the audit observation. Further reply stating remedial action taken is awaited (August 2010).

Public Health Engineering Department

4.4 Defalcation in Public Health Engineering Division, Howraghat

An amount of ₹53.20 lakh was defalcated in Public Health Engineering Division, Howraghat towards contractor's payment.

According to Rule 268 of Assam Financial Rules (AFR), no work shall commence without sanctioned detailed design and estimate, allotment of funds and orders for its commencement issued by the competent authority. Further, Rules 78 and 79 of AFR provide that every payment should be supported by Vouchers and APRs.

Test-check of the records (November-December 2008) of Public Health Engineering (PHE) Division, Howraghat and further information collected (January 2010) revealed that an amount of ₹53.20 lakh was drawn by the division from Diphu treasury (through eleven cheques) during September 2004 without any authorization in the form of sanction and Fixation of ceiling (FOC)⁴. The fund was shown received in the cash book No.15 and subsequently shown disbursed on the payment side of the cash book to two contractors charging the amount under deposit⁵ during the period 9-12 September 2004. No records, however, relating to name of works/schemes, work orders and payment vouchers/actual payee receipts towards execution of any work against the payment was available in the division. The withdrawal of fund from deposit head of account was not verified in audit due to non-maintenance of 'deposit register'.

⁴ Fixation of ceiling for assignment is issued by the Finance Department in favour of a drawing and disbursing officer. Such fixation of ceiling for assignment specifies the maximum amount up to which the officer credited shall have authority to draw on the particular treasury on which the fixation of ceiling or the assignment has been issued.

⁵ Deposit transactions under Public Works Deposits *inter-alia* provided for disbursement of sums due to contractors on closed accounts.

In the absence of records in support of utilization, the likelihood of defalcation of the entire amount of ₹53.20 lakh could not be ruled out.

On being pointed out in audit (November-December 2008), the matter was investigated by the Government in March 2010. The Government in their reply after investigation of the matter stated (July 2010) that the Government fund of ₹53.20 lakh appears to be defalcated but needs further inquiry/investigation taking evidences from all concerned, for arriving at a final decision.

Failure to exercise the prescribed checks indicates serious lapse on the part of the Department. Thus, non-observation of codal provisions resulted in suspected defalcation of Government money amounting to ₹53.20 lakh.

Dairy Development Department

4.5 Non-compliance to constitutional and codal provisions led to unauthorised expenditure besides loss of interest

Non-compliance to constitutional and codal provisions led to unauthorised expenditure of ₹2.16 crore besides loss of interest for ₹17.20 lakh.

Rule 7(1) of Assam Treasury Rules envisages that all moneys received by or tendered by Government servants on account of the revenue of the province shall not be appropriated to meet departmental expenditure nor otherwise kept apart from the Consolidated Fund or the Public Account of the State. Article 266 of the Constitution of India also lays down that all revenues received by the Government of

a State shall be credited to the Consolidated Fund of the State and that no moneys out of the said Fund shall be appropriated except in accordance with law and in the manner provided under the constitution.

Test-check (July 2009) of the records of Assistant Dairy Development Officer (ADDO), Jorhat, Assam, revealed that during 2001-02 to 2008-09 the Assistant Dairy Development Officer, Jorhat, received total revenue of ₹2.31 crore from sale proceeds of packaged milk and milk products. Of this, ADDO deposited only ₹14.74 lakh (₹7.66 lakh directly through challan and ₹7.08 lakh by transfer against the receipt of FOC) in the treasury. In violation of the Constitutional and codal provisions, ADDO spent ₹2.16 crore for meeting the departmental expenditure towards payment of milk bills, though there were persistent savings in the Department, which ranged from ₹1.17 crore to ₹8.46 crore during these years against the budget provision for procurement and processing of milk under the Major head of accounts '2404-Dairy Development, II-State Plan and Non-Plan Schemes'. Against the budget provision of ₹1.07 crore the ADDO, who was also the DDO received 'Fixation of Ceiling' of ₹59.61 lakh during the period from 2001-02 to 2008-09 drew only ₹9.12 lakh but did not use the amount for the purpose of making payment of milk bills.

Thus, the failure of ADDO, Jorhat to comply with the Constitutional and codal provisions led to unauthorised expenditure of ₹2.16 crore besides non-deposit of departmental receipts into the revenue head of Government account. Further, the Government sustained a loss of ₹17.20 lakh at the average rate of interest of Government borrowing during the years 2001-09. In reply (May 2010), it was stated

that due to non-receipt of adequate fund, the department had to pay the milk bills from the sale proceeds. Reply of the department is not acceptable as there was persistent savings ranging from ₹1.17 crore to ₹8.46 crore during these years.

In essence, non-adherence to controls prescribed to safeguard the resources by ensuring that no departmental receipts are kept out of Government accounts; kept out of consolidated funds or public account; not kept out for long and used for spending except under authorization, led to unauthorized expenditure by the Department resulting in incorrect reflection of Government revenue and expenditure.

General Administration Department

4.6 Non-compliance to constitutional and codal provisions led to Blockade of fund and Loss of interest

The Deputy Commissioner, Kokrajhar retained ₹1.24 crore in the form of DCRs for the period ranging from 13 to 211 months resulting in blockade of Government fund.

According to Assam Treasury Rules, 1937 and Subsidiary Orders (Rule 16, SO 50) read with Rules 62 and 63 of Assam Financial Rules (AFR), 1939, no money shall be drawn from the treasury unless it is required for immediate disbursement.

In violation of the above provisions, Deputy Commissioner (DC), Kokrajhar kept unutilized fund, received from time to time for different works under various schemes, in the form of DCR⁶ since 1993. As of March 2010, DC had accumulated unspent balance of ₹1.24 crore in 96 DCRs for periods ranging from 13 to 211 months. (*Appendix-VI*). DC, Kokrajhar made drawals of ₹22.82 lakh in respect of 52 out of 96 DCRs (*Appendix-VII*) during 1993 to 2007, but no particulars relating to these drawals were produced to audit. However, during discussion, the DC stated that the unspent amount of ₹22.82 lakh would be refunded to the proper head of account after obtaining necessary instructions from the Government.

Thus, retention of unspent scheme funds in DCRs for years together has resulted in loss of interest of ₹31.14 lakh at the average rate of Government borrowing during 1992-93 to 2009-10 (*Appendix-VIII*).

In reply, the DC stated (July 2010) that a further amount of ₹18.96 lakh had since been utilized, but documents in support of utilization were not furnished. Balance of ₹1.05 crore was however, still retained in DCRs. Thus, blockade of Government funds persists.

Miscellaneous Departments

4.7 Observations in Inspection Reports

(a) Assam Treasury Rules, 1937 envisages that all moneys received by or tendered by Government servants on account of the revenue of the province shall not be appropriated to meet departmental expenditure nor otherwise kept apart from the Consolidated Fund or the Public Account of the State.

⁶ Deposit at Call Receipt.

In violation of above provision, Manager, Government Livestock Farm Barhampur, Nagaon spent ₹7.32 lakh from sale proceeds of fodder and milk collected since prior to 2005-06 to 2009-10 for departmental expenditure.

This was reported to Government in December 2009; their replies had not been received (August 2010).

(b) Traveling Allowance/Leave Travel Concession Rules provide that when LTC advance is taken, the final bill should be submitted within one month of return journey, failing which the advance should be recovered in lump sum. Test-check (June 2009) of the records of District Elementary Education Officer (DEEO), Dhemaji revealed that LTC advance of ₹3.18 lakh disbursed to 18 school teachers during January 2001 to November 2005 were neither adjusted nor recovered and most of the teachers had either expired or retired rendering the advances unrecoverable.

This was reported to Government in September 2009; their replies had not been received (August 2010).

The details of the Inspection Reports issued (during the period from July-December 2009) to the Government are shown in (*Appendix-IX*). In none of these cases replies were furnished.